

AMENDED IN SENATE APRIL 5, 2005

AMENDED IN SENATE MARCH 17, 2005

SENATE BILL

No. 119

Introduced by Senator Ackerman

January 27, 2005

An act to amend, *repeal, and add* Sections 307, 5211, 7211, 9211, and 12351 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, Ackerman. Corporations: board meetings.

Existing law provides that an action required or permitted to be taken by the board of specified corporations may be taken without a meeting if all members of the board consent in writing to that action.

This bill would provide *until January 1, 2011*, that “all members of the board” ~~does not include~~ *includes* an “interested director” ~~in certain cases~~ *or a “common director” who abstains from providing consent* if specified disclosures have been made to noninterested *or noncommon* directors *and these disclosures are included in the written consent*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 307 of the Corporations Code is
- 2 amended to read:
- 3 307. (a) Unless otherwise provided in the articles or, subject
- 4 to paragraph (5) of subdivision (a) of Section 204, in the bylaws,
- 5 all of the following apply:

1 (1) Meetings of the board may be called by the chair of the
2 board or the president or any vice president or the secretary or
3 any two directors.

4 (2) Regular meetings of the board may be held without notice
5 if the time and place of the meetings are fixed by the bylaws or
6 the board. Special meetings of the board shall be held upon four
7 days' notice by mail or 48 hours' notice delivered personally or
8 by telephone, including a voice messaging system or by
9 electronic transmission by the corporation (Section 20). The
10 articles or bylaws may not dispense with notice of a special
11 meeting. A notice, or waiver of notice, need not specify the
12 purpose of any regular or special meeting of the board.

13 (3) Notice of a meeting need not be given to a director who
14 provides a waiver of notice or a consent to holding the meeting
15 or an approval of the minutes thereof in writing, whether before
16 or after the meeting, or who attends the meeting without
17 protesting, prior thereto or at its commencement, the lack of
18 notice to that director. These waivers, consents and approvals
19 shall be filed with the corporate records or made a part of the
20 minutes of the meeting.

21 (4) A majority of the directors present, whether or not a
22 quorum is present, may adjourn any meeting to another time and
23 place. If the meeting is adjourned for more than 24 hours, notice
24 of an adjournment to another time or place shall be given prior to
25 the time of the adjourned meeting to the directors who were not
26 present at the time of the adjournment.

27 (5) Meetings of the board may be held at a place within or
28 without the state that has been designated in the notice of the
29 meeting or, if not stated in the notice or there is no notice,
30 designated in the bylaws or by resolution of the board.

31 (6) Members of the board may participate in a meeting
32 through use of conference telephone, electronic video screen
33 communication, or electronic transmission by and to the
34 corporation (Sections 20 and 21). Participation in a meeting
35 through use of conference telephone or electronic video screen
36 communication pursuant to this subdivision constitutes presence
37 in person at that meeting as long as all members participating in
38 the meeting are able to hear one another. Participation in a
39 meeting through electronic transmission by and to the
40 corporation (other than conference telephone and electronic

video screen communication), pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-third the authorized number of directors or less than two, whichever is larger, unless the authorized number of directors is one, in which case one director constitutes a quorum.

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board, subject to the provisions of Section 310 and subdivision (e) of Section 317. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action and if the number of members of the board serving at the time constitutes a quorum. The written consent or consents shall be filed with the minutes of the proceedings of the board. For purposes of this subdivision only, “all members of the board” ~~does not include an “interested director” as described in Section 310, where the disclosures required by Section 310 have been made to the noninterested directors prior to their execution of the consent.~~ *shall include an “interested director” as described in subdivision (a) of Section 310 or a “common director” as described in subdivision (b) of Section 310 who abstains from providing consent, where the disclosures required by Section 310 have been made to the noninterested or noncommon directors, as*

1 *applicable, prior to their execution of the written consent or*
2 *consents and the specified disclosures are conspicuously*
3 *included in the written consent or consents executed by the*
4 *noninterested or noncommon directors.*

5 (c) This section applies also to committees of the board and
6 incorporators and action by those committees and incorporators,
7 *mutatis mutandis.*

8 (d) *This section shall remain in effect only until January 1,*
9 *2011, and as of that date is repealed, unless a later enacted*
10 *statute, that is enacted before January 1, 2011, deletes or extends*
11 *that date.*

12 SEC. 2. *Section 307 is added to the Corporations Code, to*
13 *read:*

14 307. (a) *Unless otherwise provided in the articles or, subject*
15 *to paragraph (5) of subdivision (a) of Section 204, in the bylaws,*
16 *all of the following apply:*

17 (1) *Meetings of the board may be called by the chair of the*
18 *board or the president or any vice president or the secretary or*
19 *any two directors.*

20 (2) *Regular meetings of the board may be held without notice*
21 *if the time and place of the meetings are fixed by the bylaws or*
22 *the board. Special meetings of the board shall be held upon four*
23 *days' notice by mail or 48 hours' notice delivered personally or*
24 *by telephone, including a voice messaging system or by*
25 *electronic transmission by the corporation (Section 20). The*
26 *articles or bylaws may not dispense with notice of a special*
27 *meeting. A notice, or waiver of notice, need not specify the*
28 *purpose of any regular or special meeting of the board.*

29 (3) *Notice of a meeting need not be given to a director who*
30 *provides a waiver of notice or a consent to holding the meeting*
31 *or an approval of the minutes thereof in writing, whether before*
32 *or after the meeting, or who attends the meeting without*
33 *protesting, prior thereto or at its commencement, the lack of*
34 *notice to that director. These waivers, consents and approvals*
35 *shall be filed with the corporate records or made a part of the*
36 *minutes of the meeting.*

37 (4) *A majority of the directors present, whether or not a*
38 *quorum is present, may adjourn any meeting to another time and*
39 *place. If the meeting is adjourned for more than 24 hours, notice*
40 *of an adjournment to another time or place shall be given prior*

1 to the time of the adjourned meeting to the directors who were
2 not present at the time of the adjournment.

3 (5) Meetings of the board may be held at a place within or
4 without the state that has been designated in the notice of the
5 meeting or, if not stated in the notice or there is no notice,
6 designated in the bylaws or by resolution of the board.

7 (6) Members of the board may participate in a meeting
8 through use of conference telephone, electronic video screen
9 communication, or electronic transmission by and to the
10 corporation (Sections 20 and 21). Participation in a meeting
11 through use of conference telephone or electronic video screen
12 communication pursuant to this subdivision constitutes presence
13 in person at that meeting as long as all members participating in
14 the meeting are able to hear one another. Participation in a
15 meeting through electronic transmission by and to the
16 corporation (other than conference telephone and electronic
17 video screen communication), pursuant to this subdivision
18 constitutes presence in person at that meeting if both of the
19 following apply:

20 (A) Each member participating in the meeting can
21 communicate with all of the other members concurrently.

22 (B) Each member is provided the means of participating in all
23 matters before the board, including, without limitation, the
24 capacity to propose, or to interpose an objection to, a specific
25 action to be taken by the corporation.

26 (7) A majority of the authorized number of directors
27 constitutes a quorum of the board for the transaction of business.
28 The articles or bylaws may not provide that a quorum shall be
29 less than one-third the authorized number of directors or less
30 than two, whichever is larger, unless the authorized number of
31 directors is one, in which case one director constitutes a quorum.

32 (8) An act or decision done or made by a majority of the
33 directors present at a meeting duly held at which a quorum is
34 present is the act of the board, subject to the provisions of
35 Section 310 and subdivision (e) of Section 317. The articles or
36 bylaws may not provide that a lesser vote than a majority of the
37 directors present at a meeting is the act of the board. A meeting
38 at which a quorum is initially present may continue to transact
39 business notwithstanding the withdrawal of directors, if any

1 action taken is approved by at least a majority of the required
2 quorum for that meeting.

3 (b) An action required or permitted to be taken by the board
4 may be taken without a meeting, if all members of the board shall
5 individually or collectively consent in writing to that action. The
6 written consent or consents shall be filed with the minutes of the
7 proceedings of the board. The action by written consent shall
8 have the same force and effect as a unanimous vote of the
9 directors.

10 (c) This section applies also to committees of the board and
11 incorporators and action by those committees and incorporators,
12 *mutatis mutandis*.

13 (d) This section shall become operative on January 1, 2011.

14 ~~SEC. 2.~~

15 SEC. 3. Section 5211 of the Corporations Code is amended to
16 read:

17 5211. (a) Unless otherwise provided in the articles or in the
18 bylaws, all of the following apply:

19 (1) Meetings of the board may be called by the chair of the
20 board or the president or any vice president or the secretary or
21 any two directors.

22 (2) Regular meetings of the board may be held without notice
23 if the time and place of the meetings are fixed by the bylaws or
24 the board. Special meetings of the board shall be held upon four
25 days' notice by first-class mail or 48 hours' notice delivered
26 personally or by telephone, including a voice messaging system
27 or by electronic transmission by the corporation (Section 20).
28 The articles or bylaws may not dispense with notice of a special
29 meeting. A notice, or waiver of notice, need not specify the
30 purpose of any regular or special meeting of the board.

31 (3) Notice of a meeting need not be given to a director who
32 provides a waiver of notice or consent to holding the meeting or
33 an approval of the minutes thereof in writing, whether before or
34 after the meeting, or who attends the meeting without protesting,
35 prior thereto or at its commencement, the lack of notice to that
36 director. These waivers, consents and approvals shall be filed
37 with the corporate records or made a part of the minutes of the
38 meetings.

39 (4) A majority of the directors present, whether or not a
40 quorum is present, may adjourn any meeting to another time and

1 place. If the meeting is adjourned for more than 24 hours, notice
2 of an adjournment to another time or place shall be given prior to
3 the time of the adjourned meeting to the directors who were not
4 present at the time of the adjournment.

5 (5) Meetings of the board may be held at a place within or
6 without the state that has been designated in the notice of the
7 meeting or, if not stated in the notice or there is no notice,
8 designated in the bylaws or by resolution of the board.

9 (6) Members of the board may participate in a meeting
10 through use of conference telephone, electronic video screen
11 communication or electronic transmission by and to the
12 corporation (Sections 20 and 21). Participation in a meeting
13 through use of conference telephone or electronic video screen
14 communication pursuant to this subdivision constitutes presence
15 in person at that meeting as long as all members participating in
16 the meeting are able to hear one another. Participation in a
17 meeting through use of electronic transmission by and to the
18 corporation, other than conference telephone and electronic video
19 screen communication, pursuant to this subdivision constitutes
20 presence in person at that meeting if both of the following apply:

21 (A) Each member participating in the meeting can
22 communicate with all of the other members concurrently.

23 (B) Each member is provided the means of participating in all
24 matters before the board, including, without limitation, the
25 capacity to propose, or to interpose an objection to, a specific
26 action to be taken by the corporation.

27 (7) A majority of the number of directors authorized in the
28 articles or bylaws constitutes a quorum of the board for the
29 transaction of business. The articles or bylaws may not provide
30 that a quorum shall be less than one-fifth the number of directors
31 authorized in the articles or bylaws, or less than two, whichever
32 is larger, unless the number of directors authorized in the articles
33 or bylaws is one, in which case one director constitutes a
34 quorum.

35 (8) Subject to the provisions of Sections 5212, 5233, 5234,
36 5235, and subdivision (e) of Section 5238, an act or decision
37 done or made by a majority of the directors present at a meeting
38 duly held at which a quorum is present is the act of the board.
39 The articles or bylaws may not provide that a lesser vote than a
40 majority of the directors present at a meeting is the act of the

1 board. A meeting at which a quorum is initially present may
2 continue to transact business notwithstanding the withdrawal of
3 directors, if any action taken is approved by at least a majority of
4 the required quorum for that meeting, or a greater number
5 required by this division, the articles or bylaws.

6 (b) An action required or permitted to be taken by the board
7 may be taken without a meeting, if all members of the board shall
8 individually or collectively consent in writing to that action and
9 if the number of members of the board serving at the time
10 constitutes a quorum. The written consent or consents shall be
11 filed with the minutes of the proceedings of the board. For
12 purposes of this subdivision only, “all members of the board”
13 ~~does not include an “interested director” as defined in Section~~
14 ~~5233, where the disclosures required by Section 5233 have been~~
15 ~~made to the noninterested directors prior to their execution of the~~
16 ~~consent.~~ shall include an “interested director” as defined in
17 Section 5233 or a “common director” as described in Section
18 5234 who abstains from providing consent, where the disclosures
19 required by Section 5234 have been made to the noninterested or
20 noncommon directors, as applicable, prior to their execution of
21 the written consent or consents and the specified disclosures are
22 conspicuously included in the written consent or consents
23 executed by the noninterested or noncommon directors.

24 (c) The provisions of this section apply also to incorporators,
25 to committees of the board, and to action by those incorporators
26 or committees mutatis mutandis.

27 (d) *This section shall remain in effect only until January 1,*
28 *2011, and as of that date is repealed, unless a later enacted*
29 *statute, that is enacted before January 1, 2011, deletes or extends*
30 *that date.*

31 SEC. 4. Section 5211 is added to the Corporations Code, to
32 read:

33 5211. (a) *Unless otherwise provided in the articles or in the*
34 *bylaws, all of the following apply:*

35 (1) *Meetings of the board may be called by the chair of the*
36 *board or the president or any vice president or the secretary or*
37 *any two directors.*

38 (2) *Regular meetings of the board may be held without notice*
39 *if the time and place of the meetings are fixed by the bylaws or*
40 *the board. Special meetings of the board shall be held upon four*

1 days' notice by first-class mail or 48 hours' notice delivered
2 personally or by telephone, including a voice messaging system
3 or by electronic transmission by the corporation (Section 20).
4 The articles or bylaws may not dispense with notice of a special
5 meeting. A notice, or waiver of notice, need not specify the
6 purpose of any regular or special meeting of the board.

7 (3) Notice of a meeting need not be given to a director who
8 provides a waiver of notice or consent to holding the meeting or
9 an approval of the minutes thereof in writing, whether before or
10 after the meeting, or who attends the meeting without protesting,
11 prior thereto or at its commencement, the lack of notice to that
12 director. These waivers, consents and approvals shall be filed
13 with the corporate records or made a part of the minutes of the
14 meetings.

15 (4) A majority of the directors present, whether or not a
16 quorum is present, may adjourn any meeting to another time and
17 place. If the meeting is adjourned for more than 24 hours, notice
18 of an adjournment to another time or place shall be given prior
19 to the time of the adjourned meeting to the directors who were
20 not present at the time of the adjournment.

21 (5) Meetings of the board may be held at a place within or
22 without the state that has been designated in the notice of the
23 meeting or, if not stated in the notice or there is no notice,
24 designated in the bylaws or by resolution of the board.

25 (6) Members of the board may participate in a meeting
26 through use of conference telephone, electronic video screen
27 communication or electronic transmission by and to the
28 corporation (Sections 20 and 21). Participation in a meeting
29 through use of conference telephone or electronic video screen
30 communication pursuant to this subdivision constitutes presence
31 in person at that meeting as long as all members participating in
32 the meeting are able to hear one another. Participation in a
33 meeting through use of electronic transmission by and to the
34 corporation, other than conference telephone and electronic
35 video screen communication, pursuant to this subdivision
36 constitutes presence in person at that meeting if both of the
37 following apply:

38 (A) Each member participating in the meeting can
39 communicate with all of the other members concurrently.

1 (B) Each member is provided the means of participating in all
2 matters before the board, including, without limitation, the
3 capacity to propose, or to interpose an objection to, a specific
4 action to be taken by the corporation.

5 (7) A majority of the number of directors authorized in the
6 articles or bylaws constitutes a quorum of the board for the
7 transaction of business. The articles or bylaws may not provide
8 that a quorum shall be less than one-fifth the number of directors
9 authorized in the articles or bylaws, or less than two, whichever
10 is larger, unless the number of directors authorized in the
11 articles or bylaws is one, in which case one director constitutes a
12 quorum.

13 (8) Subject to the provisions of Sections 5212, 5233, 5234,
14 5235, and subdivision (e) of Section 5238, an act or decision
15 done or made by a majority of the directors present at a meeting
16 duly held at which a quorum is present is the act of the board.
17 The articles or bylaws may not provide that a lesser vote than a
18 majority of the directors present at a meeting is the act of the
19 board. A meeting at which a quorum is initially present may
20 continue to transact business notwithstanding the withdrawal of
21 directors, if any action taken is approved by at least a majority of
22 the required quorum for that meeting, or a greater number
23 required by this division, the articles or bylaws.

24 (b) An action required or permitted to be taken by the board
25 may be taken without a meeting, if all members of the board shall
26 individually or collectively consent in writing to that action. The
27 written consent or consents shall be filed with the minutes of the
28 proceedings of the board. The action by written consent shall
29 have the same force and effect as the unanimous vote of the
30 directors. For the purposes of this section only, "all members of
31 the board" does not include an "interested director" as defined
32 in Section 5233.

33 (c) The provisions of this section apply also to incorporators,
34 to committees of the board, and to action by those incorporators
35 or committees *mutatis mutandis*.

36 (d) This section shall become operative on January 1, 2011.

37 ~~SEC. 3.~~

38 SEC. 5. Section 7211 of the Corporations Code is amended to
39 read:

1 7211. (a) Unless otherwise provided in the articles or in the
2 bylaws, all of the following apply:

3 (1) Meetings of the board may be called by the chair of the
4 board or the president or any vice president or the secretary or
5 any two directors.

6 (2) Regular meetings of the board may be held without notice
7 if the time and place of the meetings are fixed by the bylaws or
8 the board. Special meetings of the board shall be held upon four
9 days' notice by first-class mail or 48 hours' notice delivered
10 personally or by telephone, including a voice messaging system
11 or by electronic transmission by the corporation (Section 20).
12 The articles or bylaws may not dispense with notice of a special
13 meeting. A notice, or waiver of notice, need not specify the
14 purpose of any regular or special meeting of the board.

15 (3) Notice of a meeting need not be given to a director who
16 provided a waiver of notice or consent to holding the meeting or
17 an approval of the minutes thereof in writing, whether before or
18 after the meeting, or who attends the meeting without protesting,
19 prior thereto or at its commencement, the lack of notice to that
20 director. These waivers, consents and approvals shall be filed
21 with the corporate records or made a part of the minutes of the
22 meetings.

23 (4) A majority of the directors present, whether or not a
24 quorum is present, may adjourn any meeting to another time and
25 place. If the meeting is adjourned for more than 24 hours, notice
26 of an adjournment to another time or place shall be given prior to
27 the time of the adjourned meeting to the directors who were not
28 present at the time of the adjournment.

29 (5) Meetings of the board may be held at a place within or
30 without the state that has been designated in the notice of the
31 meeting or, if not stated in the notice or if there is no notice,
32 designated in the bylaws or by resolution of the board.

33 (6) Members of the board may participate in a meeting
34 through use of conference telephone, electronic video screen
35 communication, or electronic transmission by and to the
36 corporation (Sections 20 and 21). Participation in a meeting
37 through use of conference telephone or electronic video screen
38 communication pursuant to this subdivision constitutes presence
39 in person at that meeting as long as all members participating in
40 the meeting are able to hear one another. Participation in a

1 meeting through use of electronic transmission by and to the
2 corporation, other than conference telephone and electronic video
3 screen communication, pursuant to this subdivision constitutes
4 presence in person at that meeting if both of the following apply:

5 (A) Each member participating in the meeting can
6 communicate with all of the other members concurrently.

7 (B) Each member is provided the means of participating in all
8 matters before the board, including, without limitation, the
9 capacity to propose, or to interpose an objection to, a specific
10 action to be taken by the corporation.

11 (7) A majority of the number of directors authorized in the
12 articles or bylaws constitutes a quorum of the board for the
13 transaction of business. The articles or bylaws may not provide
14 that a quorum shall be less than one-fifth the number of directors
15 authorized in the articles or bylaws, or less than two, whichever
16 is larger, unless the number of directors authorized in the articles
17 or bylaws is one, in which case one director constitutes a
18 quorum.

19 (8) Subject to the provisions of Sections 7212, 7233, 7234,
20 and subdivision (e) of Section 7237 and Section 5233, insofar as
21 it is made applicable pursuant to Section 7238, an act or decision
22 done or made by a majority of the directors present at a meeting
23 duly held at which a quorum is present is the act of the board.
24 The articles or bylaws may not provide that a lesser vote than a
25 majority of the directors present at a meeting is the act of the
26 board. A meeting at which a quorum is initially present may
27 continue to transact business notwithstanding the withdrawal of
28 directors, if any action taken is approved by at least a majority of
29 the required quorum for that meeting, or a greater number
30 required by this division, the articles or bylaws.

31 (b) An action required or permitted to be taken by the board
32 may be taken without a meeting, if all members of the board shall
33 individually or collectively consent in writing to that action and
34 if the number of members of the board serving at the time
35 constitutes a quorum. The written consent or consents shall be
36 filed with the minutes of the proceedings of the board. For
37 purposes of this subdivision only, "all members of the board"
38 ~~does not include an "interested director" as defined in Section~~
39 ~~7233, where the disclosures required by Section 7233 have been~~
40 ~~made to the noninterested directors prior to their execution of the~~

~~consent.~~ shall include an “interested director” as described in subdivision (a) of Section 7233 or a “common director” as described in subdivision (b) of Section 7233 who abstains from providing consent, where the disclosures required by Section 7233 have been made to the noninterested or noncommon directors, as applicable, prior to their execution of the written consent or consents and the specified disclosures are conspicuously included in the written consent or consents executed by the noninterested or noncommon directors.

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees *mutatis mutandis*.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 6. Section 7211 is added to the Corporations Code, to read:

7211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days’ notice by first-class mail or 48 hours’ notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provided a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

1 (4) *A majority of the directors present, whether or not a*
2 *quorum is present, may adjourn any meeting to another time and*
3 *place. If the meeting is adjourned for more than 24 hours, notice*
4 *of an adjournment to another time or place shall be given prior*
5 *to the time of the adjourned meeting to the directors who were*
6 *not present at the time of the adjournment.*

7 (5) *Meetings of the board may be held at a place within or*
8 *without the state that has been designated in the notice of the*
9 *meeting or, if not stated in the notice or if there is no notice,*
10 *designated in the bylaws or by resolution of the board.*

11 (6) *Members of the board may participate in a meeting*
12 *through use of conference telephone, electronic video screen*
13 *communication, or electronic transmission by and to the*
14 *corporation (Sections 20 and 21). Participation in a meeting*
15 *through use of conference telephone or electronic video screen*
16 *communication pursuant to this subdivision constitutes presence*
17 *in person at that meeting as long as all members participating in*
18 *the meeting are able to hear one another. Participation in a*
19 *meeting through use of electronic transmission by and to the*
20 *corporation, other than conference telephone and electronic*
21 *video screen communication, pursuant to this subdivision*
22 *constitutes presence in person at that meeting if both of the*
23 *following apply:*

24 (A) *Each member participating in the meeting can*
25 *communicate with all of the other members concurrently.*

26 (B) *Each member is provided the means of participating in all*
27 *matters before the board, including, without limitation, the*
28 *capacity to propose, or to interpose an objection to, a specific*
29 *action to be taken by the corporation.*

30 (7) *A majority of the number of directors authorized in the*
31 *articles or bylaws constitutes a quorum of the board for the*
32 *transaction of business. The articles or bylaws may not provide*
33 *that a quorum shall be less than one-fifth the number of directors*
34 *authorized in the articles or bylaws, or less than two, whichever*
35 *is larger, unless the number of directors authorized in the*
36 *articles or bylaws is one, in which case one director constitutes a*
37 *quorum.*

38 (8) *Subject to the provisions of Sections 7212, 7233, 7234, and*
39 *subdivision (e) of Section 7237 and Section 5233, insofar as it is*
40 *made applicable pursuant to Section 7238, an act or decision*

done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For the purposes of this section only, “all members of the board” does not include an “interested director” as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees *mutatis mutandis*.

(d) This section shall become operative on January 1, 2011.

~~SEC. 4.~~

SEC. 7. Section 9211 of the Corporations Code is amended to read:

9211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days’ notice by first-class mail or 48 hours’ notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by a corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

1 (3) Notice of a meeting need not be given to a director who
2 provided a waiver of notice or consent to holding the meeting or
3 an approval of the minutes thereof in writing, whether before or
4 after the meeting, or who attends the meeting without protesting,
5 prior thereto or at its commencement, the lack of notice to that
6 director. These waivers, consents and approvals shall be filed
7 with the corporate records or made a part of the minutes of the
8 meetings.

9 (4) A majority of the directors present, whether or not a
10 quorum is present, may adjourn any meeting to another time and
11 place.

12 (5) Meetings of the board may be held at a place within or
13 without the state that has been designated in the notice of the
14 meeting or, if not stated in the notice or there is no notice,
15 designated in the bylaws or by resolution of the board.

16 (6) Members of the board may participate in a meeting
17 through use of conference telephone, electronic video screen
18 communication, or electronic transmission by and to the
19 corporation. Participation in a meeting through use of conference
20 telephone or electronic video screen communication pursuant to
21 this subdivision constitutes presence in person at that meeting as
22 long as all members participating in the meeting are able to hear
23 one another. Participation in a meeting through use of electronic
24 transmission by and to the corporation, other than conference
25 telephone and electronic video screen communication pursuant to
26 this subdivision constitutes presence in person at that meeting, if
27 both of the following apply:

28 (A) Each member participating in the meeting can
29 communicate with all of the other members concurrently.

30 (B) Each member is provided the means of participating in all
31 matters before the board, including, without limitation, the
32 capacity to propose, or to interpose an objection to, a specific
33 action to be taken by the corporation.

34 (7) A majority of the number of directors authorized in the
35 articles or bylaws constitutes a quorum of the board for the
36 transaction of business.

37 (8) An act or decision done or made by a majority of the
38 directors present at a meeting duly held at which a quorum is
39 present is the act of the board. The articles or bylaws may not
40 provide that a lesser vote than a majority of the directors present

1 at a meeting is the act of the board. A meeting at which a quorum
2 is initially present may continue to transact business
3 notwithstanding the withdrawal of directors, if any action taken
4 is approved by at least a majority of the required quorum for that
5 meeting, or a greater number as is required by this division, the
6 articles or bylaws.

7 (b) An action required or permitted to be taken by the board
8 may be taken without a meeting, if all members of the board shall
9 individually or collectively consent in writing to that action and
10 if the number of members serving at the time constitutes a
11 quorum. The written consent or consents shall be filed with the
12 minutes of the proceedings of the board. For purposes of this
13 subdivision only, “all members of the board” ~~does not include an~~
14 ~~“interested director” as defined in Section 9243, where the~~
15 ~~disclosures required by Section 9243 have been made to the~~
16 ~~noninterested directors prior to their execution of the consent.~~
17 *shall include an “interested director” as defined in Section 9243*
18 *or a “common director” as described in Section 9244 who*
19 *abstains from providing consent, where the disclosures required*
20 *by Section 9244 have been made to the noninterested or*
21 *noncommon directors, as applicable, prior to their execution of*
22 *the written consent or consents and the specified disclosures are*
23 *conspicuously included in the written consent or consents*
24 *executed by the noninterested or noncommon directors.*

25 (c) This section applies also to incorporators, to committees of
26 the board, and to action by those incorporators or committees
27 mutatis mutandis.

28 (d) *This section shall remain in effect only until January 1,*
29 *2011, and as of that date is repealed, unless a later enacted*
30 *statute, that is enacted before January 1, 2011, deletes or extends*
31 *that date.*

32 SEC. 8. Section 9211 is added to the Corporations Code, to
33 read:

34 9211. (a) *Unless otherwise provided in the articles or in the*
35 *bylaws, all of the following apply:*

36 (1) *Meetings of the board may be called by the chair of the*
37 *board or the president or any vice president or the secretary or*
38 *any two directors.*

39 (2) *Regular meetings of the board may be held without notice*
40 *if the time and place of the meetings are fixed by the bylaws or*

1 the board. Special meetings of the board shall be held upon four
2 days' notice by first-class mail or 48 hours' notice delivered
3 personally or by telephone, including a voice messaging system
4 or by electronic transmission by a corporation (Section 20). The
5 articles or bylaws may not dispense with notice of a special
6 meeting. A notice, or waiver of notice, need not specify the
7 purpose of any regular or special meeting of the board.

8 (3) Notice of a meeting need not be given to a director who
9 provided a waiver of notice or consent to holding the meeting or
10 an approval of the minutes thereof in writing, whether before or
11 after the meeting, or who attends the meeting without protesting,
12 prior thereto or at its commencement, the lack of notice to that
13 director. These waivers, consents and approvals shall be filed
14 with the corporate records or made a part of the minutes of the
15 meetings.

16 (4) A majority of the directors present, whether or not a
17 quorum is present, may adjourn any meeting to another time and
18 place.

19 (5) Meetings of the board may be held at a place within or
20 without the state that has been designated in the notice of the
21 meeting or, if not stated in the notice or there is no notice,
22 designated in the bylaws or by resolution of the board.

23 (6) Members of the board may participate in a meeting
24 through use of conference telephone, electronic video screen
25 communication, or electronic transmission by and to the
26 corporation. Participation in a meeting through use of
27 conference telephone or electronic video screen communication
28 pursuant to this subdivision constitutes presence in person at that
29 meeting as long as all members participating in the meeting are
30 able to hear one another. Participation in a meeting through use
31 of electronic transmission by and to the corporation, other than
32 conference telephone and electronic video screen communication
33 pursuant to this subdivision constitutes presence in person at that
34 meeting, if both of the following apply:

35 (A) Each member participating in the meeting can
36 communicate with all of the other members concurrently.

37 (B) Each member is provided the means of participating in all
38 matters before the board, including, without limitation, the
39 capacity to propose, or to interpose an objection to, a specific
40 action to be taken by the corporation.

1 (7) *A majority of the number of directors authorized in the*
2 *articles or bylaws constitutes a quorum of the board for the*
3 *transaction of business.*

4 (8) *An act or decision done or made by a majority of the*
5 *directors present at a meeting duly held at which a quorum is*
6 *present is the act of the board. The articles or bylaws may not*
7 *provide that a lesser vote than a majority of the directors present*
8 *at a meeting is the act of the board. A meeting at which a quorum*
9 *is initially present may continue to transact business*
10 *notwithstanding the withdrawal of directors, if any action taken*
11 *is approved by at least a majority of the required quorum for that*
12 *meeting, or a greater number as is required by this division, the*
13 *articles or bylaws.*

14 (b) *An action required or permitted to be taken by the board*
15 *may be taken without a meeting, if all members of the board shall*
16 *individually or collectively consent in writing to that action. The*
17 *written consent or consents shall be filed with the minutes of the*
18 *proceedings of the board. The action by written consent shall*
19 *have the same force and effect as the unanimous vote of the*
20 *directors.*

21 (c) *This section applies also to incorporators, to committees of*
22 *the board, and to action by those incorporators or committees*
23 *mutatis mutandis.*

24 (d) *This section shall become operative on January 1, 2011.*

25 ~~SEC. 5.~~

26 SEC. 9. Section 12351 of the Corporations Code is amended
27 to read:

28 12351. (a) Unless otherwise provided in the articles or in the
29 bylaws:

30 (1) Meetings of the board may be called by the chairman of
31 the board or the president or any vice president or the secretary
32 or any two directors.

33 (2) Regular meetings of the board may be held without notice
34 if the time and place of such meetings are fixed by the bylaws or
35 the board. Special meetings of the board shall be held upon four
36 days' notice by first-class mail or 48 hours' notice delivered
37 personally or by telephone, including a voice messaging system
38 or by electronic transmission by the corporation (Section 20).
39 The articles or bylaws may not dispense with notice of a special

1 meeting. A notice, or waiver of notice, need not specify the
2 purpose of any regular or special meeting of the board.

3 (3) Notice of a meeting need not be given to any director who
4 provides a waiver of notice or consent to holding the meeting or
5 an approval of the minutes thereof in writing, whether before or
6 after the meeting, or who attends the meeting without protesting,
7 prior thereto or at its commencement, the lack of notice to such
8 director. All such waivers, consents and approvals shall be filed
9 with the corporate records or made a part of the minutes of the
10 meetings.

11 (4) A majority of the directors present, whether or not a
12 quorum is present, may adjourn any meeting to another time and
13 place. If the meeting is adjourned for more than 24 hours, notice
14 of any adjournment to another time or place shall be given prior
15 to the time of the adjourned meeting to the directors who were
16 not present at the time of the adjournment.

17 (5) Meetings of the board may be held at any place within or
18 without the state which has been designated in the notice of the
19 meeting or, if not stated in the notice or if there is no notice,
20 designated in the bylaws or by resolution of the board.

21 (6) Members of the board may participate in a meeting
22 through use of conference telephone, electronic video screen
23 communication, or electronic transmission by and to the
24 corporation (Sections 20 and 21). Participation in a meeting
25 through use of conference telephone or electronic video screen
26 communication pursuant to this subdivision constitutes presence
27 in person at that meeting as long as all members participating in
28 the meeting are able to hear one another. Participation in a
29 meeting through use of electronic transmission by and to the
30 corporation, other than conference telephone and electronic video
31 screen communication pursuant to this subdivision constitutes
32 presence in person at that meeting if both of the following apply:

33 (A) Each member participating in the meeting can
34 communicate with all of the other members concurrently.

35 (B) Each member is provided the means of participating in all
36 matters before the board, including, without limitation, the
37 capacity to propose, or to interpose an objection to, a specific
38 action to be taken by the corporation.

39 (7) A majority of the number of directors authorized in the
40 articles or bylaws constitutes a quorum of the board for the

1 transaction of business. The articles or bylaws may not provide
2 that a quorum shall be less than one-fifth the number of directors
3 authorized in the articles or bylaws, or less than two, whichever
4 is larger.

5 (8) Subject to the provisions of Sections 12352, 12373, 12374
6 and subdivision (e) of Section 12377, every act or decision done
7 or made by a majority of the directors present at a meeting duly
8 held at which a quorum is present is the act of the board. The
9 articles or bylaws may not provide that a lesser vote than a
10 majority of the directors present at a meeting is the act of the
11 board. A meeting at which a quorum is initially present may
12 continue to transact business notwithstanding the withdrawal of
13 directors, if any action taken is approved by at least a majority of
14 the required quorum for such meeting, or such greater number as
15 is required by this division, the articles or bylaws.

16 (b) Any action required or permitted to be taken by the board
17 may be taken without a meeting, if all members of the board shall
18 individually or collectively consent in writing to such action and
19 if the number of members of the board serving at the time
20 constitutes a quorum. Such written consent or consents shall be
21 filed with the minutes of the proceedings of the board. For
22 purposes of this subdivision only, "all members of the board"
23 ~~does not include an "interested director" as described in Section~~
24 ~~12373, where the disclosures required by Section 12373 have~~
25 ~~been made to the noninterested directors prior to their execution~~
26 ~~of the consent.~~ *shall include an "interested director" as*
27 *described in subdivision (a) of Section 12373 or a "common*
28 *director" as described in subdivision (b) of Section 12373 who*
29 *abstains from providing consent, where the disclosures required*
30 *by Section 12373 have been made to the noninterested or*
31 *noncommon directors, as applicable, prior to their execution of*
32 *the written consent or consents and the specified disclosures are*
33 *conspicuously included in the written consent or consents*
34 *executed by the noninterested or noncommon directors.*

35 (c) The provisions of this section apply also to incorporators,
36 to committees of the board, and to action by such incorporators
37 or such committees mutatis mutandis.

38 (d) *This section shall remain in effect only until January 1,*
39 *2011, and as of that date is repealed, unless a later enacted*

1 *statute, that is enacted before January 1, 2011, deletes or extends*
2 *that date.*

3 *SEC. 10. Section 12351 is added to the Corporations Code, to*
4 *read:*

5 *12351. (a) Unless otherwise provided in the articles or in the*
6 *bylaws:*

7 *(1) Meetings of the board may be called by the chairman of*
8 *the board or the president or any vice president or the secretary*
9 *or any two directors.*

10 *(2) Regular meetings of the board may be held without notice*
11 *if the time and place of such meetings are fixed by the bylaws or*
12 *the board. Special meetings of the board shall be held upon four*
13 *days' notice by first-class mail or 48 hours' notice delivered*
14 *personally or by telephone, including a voice messaging system*
15 *or by electronic transmission by the corporation (Section 20).*
16 *The articles or bylaws may not dispense with notice of a special*
17 *meeting. A notice, or waiver of notice, need not specify the*
18 *purpose of any regular or special meeting of the board.*

19 *(3) Notice of a meeting need not be given to any director who*
20 *provides a waiver of notice or consent to holding the meeting or*
21 *an approval of the minutes thereof in writing, whether before or*
22 *after the meeting, or who attends the meeting without protesting,*
23 *prior thereto or at its commencement, the lack of notice to such*
24 *director. All such waivers, consents and approvals shall be filed*
25 *with the corporate records or made a part of the minutes of the*
26 *meetings.*

27 *(4) A majority of the directors present, whether or not a*
28 *quorum is present, may adjourn any meeting to another time and*
29 *place. If the meeting is adjourned for more than 24 hours, notice*
30 *of any adjournment to another time or place shall be given prior*
31 *to the time of the adjourned meeting to the directors who were*
32 *not present at the time of the adjournment.*

33 *(5) Meetings of the board may be held at any place within or*
34 *without the state which has been designated in the notice of the*
35 *meeting or, if not stated in the notice or if there is no notice,*
36 *designated in the bylaws or by resolution of the board.*

37 *(6) Members of the board may participate in a meeting*
38 *through use of conference telephone, electronic video screen*
39 *communication, or electronic transmission by and to the*
40 *corporation (Sections 20 and 21). Participation in a meeting*

1 *through use of conference telephone or electronic video screen*
2 *communication pursuant to this subdivision constitutes presence*
3 *in person at that meeting as long as all members participating in*
4 *the meeting are able to hear one another. Participation in a*
5 *meeting through use of electronic transmission by and to the*
6 *corporation, other than conference telephone and electronic*
7 *video screen communication pursuant to this subdivision*
8 *constitutes presence in person at that meeting if both of the*
9 *following apply:*

10 *(A) Each member participating in the meeting can*
11 *communicate with all of the other members concurrently.*

12 *(B) Each member is provided the means of participating in all*
13 *matters before the board, including, without limitation, the*
14 *capacity to propose, or to interpose an objection to, a specific*
15 *action to be taken by the corporation.*

16 *(7) A majority of the number of directors authorized in the*
17 *articles or bylaws constitutes a quorum of the board for the*
18 *transaction of business. The articles or bylaws may not provide*
19 *that a quorum shall be less than one-fifth the number of directors*
20 *authorized in the articles or bylaws, or less than two, whichever*
21 *is larger.*

22 *(8) Subject to the provisions of Sections 12352, 12373, 12374*
23 *and subdivision (e) of Section 12377, every act or decision done*
24 *or made by a majority of the directors present at a meeting duly*
25 *held at which a quorum is present is the act of the board. The*
26 *articles or bylaws may not provide that a lesser vote than a*
27 *majority of the directors present at a meeting is the act of the*
28 *board. A meeting at which a quorum is initially present may*
29 *continue to transact business notwithstanding the withdrawal of*
30 *directors, if any action taken is approved by at least a majority of*
31 *the required quorum for such meeting, or such greater number as*
32 *is required by this division, the articles or bylaws.*

33 *(b) Any action required or permitted to be taken by the board*
34 *may be taken without a meeting, if all members of the board shall*
35 *individually or collectively consent in writing to such action.*
36 *Such written consent or consents shall be filed with the minutes*
37 *of the proceedings of the board. Such action by written consent*
38 *shall have the same force and effect as a unanimous vote of such*
39 *directors.*

1 (c) *The provisions of this section apply also to incorporators,*
2 *to committees of the board, and to action by such incorporators*
3 *or such committees mutatis mutandis.*

4 (d) *This section shall become operative on January 1, 2011.*

5 ~~SEC. 6.~~

6 SEC. 11. It is the intent of the Legislature that the provisions
7 of this act that add the language “and if the number of members
8 of the board serving at the time constitutes a quorum” do not
9 constitute a change of law but instead make a clarification to
10 guide directors. It is also the intent of the Legislature that the
11 provisions of this act that delete the sentence “The action by
12 written consent shall have the same force and effect as a
13 unanimous vote of the directors” do not constitute a change of
14 law but instead delete superfluous language addressed by the
15 respective sections of law.